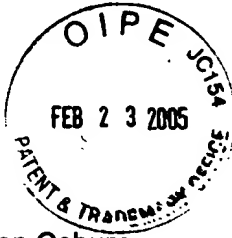




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SEP 10 2001

OFFICE OF PETITIONS

In re Application of
Jose A. Fernandez-Pol
Application No. 09/784,631
Filed: February 15, 2001
For: Pharmacological Agent and Method of
Treatment

:
:
: DECISION GRANTING STATUS
: UNDER 37 CFR 1.47(b)
:

This is in response to the petition under 37 CFR 1.47(b), filed June 22, 2001 and supplemented on September 6, 2001.

The petition under 37 CFR 1.47(b) is granted.

Petitioner has shown that inventor Jose A. Fernandez-Pol has refused to join in the filing of the above-identified application.

The above-identified application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing inventor at the address given in the petition. Notice of the filing of this application will also be published in the Official Gazette.

After the mailing of this decision, the file will be forwarded to the Office of Initial Patent Examination for further processing.

Telephone inquiries regarding this decision should be directed to Latrice Bond at (703) 308-6911.

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



UNITED STATES PATENT AND TRADEMARK OFFICE

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Mr. Jose A. Fernandez-Pol
437 Hunters Hill Drive
Chesterfield, MO 63017

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SEP 10 2001

OFFICE OF PETITIONS

In re Application of
J. A. Fernandez-Pol
Application No. 09/784,631
Filed: February 15, 2001
For: Pharmacological Agent and Method of Treatment

Dear Mr. Fernandez-Pol:

You are named as a joint inventor in the above identified United States patent application, filed under the provisions of 35 U.S.C. 118 (United States Code), and 37 CFR 1.47(a), Rules of Practice in Patent Cases. Should a patent be granted on the application you will designated therein as a joint inventor.

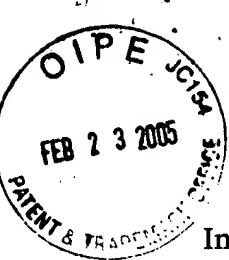
As a named inventor, you are entitled to inspect any paper in the file wrapper of the application, order copies of all or any patent thereof (at a prepaid cost per 37 CFR 1.19) or make your position of record in the application. Alternatively, you may arrange to do any of the preceding through a registered patent attorney or agent presenting written authorization from you. If you care to join in the application, counsel of record (see below) would presumably assist you. Joining in the application would entail the filing of an appropriate oath or declaration by you pursuant to 37 CFR 1.63.

Telephone inquiries regarding this communication should be directed to Latrice Bond at (703) 308-6911. Requests for information regarding your application should be directed to the File Information Unit at (703) 308-6911. Information regarding how to pay for and order a copy of the application, or a specific paper in the application, should be directed to Certification Division at (703) 308-9726 or 1 (800) 972-6382 (outside the Washington D.C. area).

Latrice Bond
Paralegal Specialist
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Frances Hicks
Lead Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

cc: Thompson Coburn
One Firststar Plaza
St. Louis, MO 63101



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Fernandez-Pol

For: PHARMACOLOGICAL AGENT
AND METHOD OF TREATMENT

Application No. 09/784,631

Filing date: 02/15/2001

Assistant Commissioner for Patents
Washington, D.C. 20231

PETITION UNDER 37 C.F.R. §1.47 (b)

Dear Sir:

Under 37 C.F.R. §1.47(b), whenever all of the inventors refuse to execute an application for patent, a person to whom an inventor has assigned or agreed in writing to assign the invention or who otherwise shows sufficient proprietary interest in the matter justifying such action may make application for patent on behalf of and as agent for all of the inventors. The oath or declaration in such an application must be accompanied by a petition including proof of the pertinent facts, a showing that such action is necessary to preserve the rights of the parties or to prevent irreparable damage, the fee set forth in §1.17(i), and the last known address of all of the inventors. 37 C.F.R. §1.47(b).

In accordance with 37 C.F.R. §1.47(b), Novactyl, Inc. ("Assignee"), assignee of the above-referenced patent application, through its Vice President and Chief Scientific Officer, Michael G. Douglas, respectfully requests authority to act on behalf of and as agent for all of the inventors. The inventor, Jose A. Fernandez-Pol assigned the invention claimed in the above-referenced patent application to Assignee in an assignment dated February 1, 2000, which is attached hereto. This assignment document was recorded in the U.S. Patent and Trademark Office on February 15, 2001 as reel/frame number 011602/0755.

Such action is necessary to preserve the rights of Assignee and to prevent irreparable damage to assignee. Under 37 C.F.R. §1.51(b) an oath or declaration must be filed with a specification prescribed by 35 U.S.C. §112, including a claim and drawings when necessary to complete a patent application. If an oath or declaration is not filed, the patent application will go abandoned resulting in irreparable damage and a loss of Assignee's rights under patent.

The inventor, Dr. Fernandez-Pol, was terminated from employment with Novactyl, Inc. in November of 2000. More recently, at Novactyl Inc.'s annual stockholder's meeting, which took place on June 2, 2001, Dr. Fernandez-Pol resigned from the Board of Directors. Since Dr. Fernandez-Pol's termination, he has been antagonistic to Assignee and its interests. As such, Dr. Fernandez-Pol has refused to participate in the prosecution of the above-referenced patent application. More specifically, Dr. Fernandez-Pol has refused to sign a declaration, which states that he is the inventor of the claimed invention.

On May 25, 2001, at the request of Dr. Fernandez-Pol, Assignee and Dr. Fernandez-Pol, along with their relative attorneys, met to discuss, among other topics, the status of the above-referenced patent application. At that time, the undersigned attorney for Assignee presented a declaration to Dr. Fernandez-Pol, which stated that he believed himself to be the inventor of the claimed invention and requested Dr. Fernandez-Pol's signature. It was explained to Dr. Fernandez-Pol at that time that no amendments had been made to the application since he assigned his rights to the invention to Assignee. In addition, a copy of the complete specification, including the claims, was provided to Dr. Fernandez-Pol. To date, Dr. Fernandez-Pol has refused to sign the declaration. The undersigned attorney for Assignee has made repeated unsuccessful attempts to obtain Dr. Fernandez-Pol's signature, which have included telephone calls to Gordon Sieckmann, attorney for Dr. Fernandez-Pol. On June 13, 2001 Mr. Sieckmann orally informed the undersigned attorney that Dr. Fernandez-Pol would not sign the declaration. On August 6, 2001 the undersigned attorney received a letter from

Mr. Sieckmann stating that Dr. Fernandez-Pol will not sign the requested supplemental oath. Again, if no declaration or oath is submitted, the application will go abandoned, which will result in a loss of Assignee's rights to the claimed invention and irreparable harm to Assignee. Most importantly, Assignee would lose the exclusive rights under patent to prevent others from making, using or selling its claimed invention for a limited time.

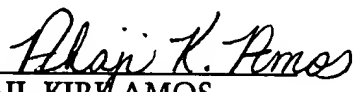
If Assignee is not authorized to sign on behalf of Dr. Fernandez-Pol, Assignee will suffer irreparable harm. Specifically, the time and revenue Assignee invested toward the research and development of the claimed invention would be lost. Assignee would also lose future income derived from the sale, use or manufacture of the invention. In addition, Assignee would lose potential revenue derived from licensing of Novactyl's rights in the invention.

In compliance with 37 C.F.R. §1.47(b), the last known address of the sole inventor, Jose A. Fernandez-Pol, is 437 Hunters Hill Drive, Chesterfield, MO 63017, USA.

The undersigned attorney may be reached at the address indicated below, by phone at (314) 552-6123, or by fax at (314) 552-7123.

Respectfully submitted,

Thompson Coburn LLP

By 
AHAJI KIRK AMOS
Registration No.: 46,831
One Firststar Plaza
St. Louis, MO 63101
(314) 552-6123
(314) 552-7123 FAX

Enclosures: Letter from Gordon Sieckmann re: Dr. Fernandez-Pol's refusal to sign